IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Bail Appl..No. 5162 of 2007()

[CRIME NO.39/2007 OF MARAD POLICE, KOZHIKODE]

PETITIONER/ACCUSED

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1. SHIBU.V, AGED 32 YEARS, S/O KUTTAN,
   VAYALAKKARA HOUSE, PANNIYANKARA AMSOM DESOM,
   KOZHIKODE TALUK.

2. KUTTAN, AGED 65 YEARS,
   S/O PERVAKUTTY, VAYALAKKARA HOUSE,
   PANNIYANKARA AMSOM DESOM, KOZHIKODE TALUK.

3. BABY, AGED 55 YEARS,
   W/O KUTTAN, VAYALAKKARA HOUSE,
   PANNIYANKARA AMSOM, DESOM, KOZHIKODE TALUK.

BY ADV. SRI.K.M.FIROZ

RESPONDENTS: COMPLAINANT

THE STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, MARAD POLICE STATION,
KOZHIKODE, THROUGH THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No. 5162 of 2007

Dated this the 23rd day of August 2007

O R D E R

Application for anticipatory bail. The petitioners are husband, father-in-law and mother-in-law of a deceased bride. The marriage took place on 29/4/2007. There was strain in the matrimonial tie. The deceased bride had returned to her house. There, she allegedly committed suicide on 2/8/2007. It is the case of the prosecution that matrimonial cruelty of the culpable variety inflicted on her by the petitioners was the cause of the commission of suicide by the deceased. A crime has been registered under Section 498A and 306 I.P.C. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent. There was maladjustment of the newly wedded bride. She hence had returned to her house. It is incorrect to say that any conduct on the part of the petitioners was responsible for the commission of suicide by her. In these circumstances, learned counsel for the petitioners prays that anticipatory bail may be granted to all the petitioners.

2. At any rate, the learned counsel for the petitioner submits that the claim for anticipatory bail of the father-in-law and mother-in-law of the bride must be considered differently than that of the husband of the deceased. It is prayed that those petitioners may, at any rate, be granted anticipatory bail.

4. The learned Public Prosecutor opposes the application for anticipatory bail in so far as the petitioner/husband is concerned. So far as the petitioners/father-in-law and mother-in-law are concerned, appropriate conditions may be imposed, it is submitted by the learned Public Prosecutor. The learned Public Prosecutor submits that indications galore to suggest that the husband/petitioner was guilty of matrimonial cruelty of the culpable variety. There is of course an allegation that when the husband returned from the wife's house, she made some demand. Then he told her that she could go and hang herself. This allegation by itself is not sufficient to attract culpability under Section 306 I.P.C., contends the learned counsel for the petitioner. The learned Public Prosecutor, on the contrary contends that the totality of the circumstances unmistakably point to the culpability of the petitioner for both offences.

5. Having considered all the relevant circumstances, I am of the opinion that there is merit in the opposition by the learned Public Prosecutor in so far as the claim for anticipatory

bail for the first petitioner/husband is concerned. The learned Public Prosecutor was requested to make the case diary available for my perusal. I have perused the case diary. I am satisfied that there are no features in this case that can justify the invocation of the extraordinary equitable jurisdiction under Section 438 Cr.P.C. in favour of the first petitioner/husband. This, I am satisfied is a fit case where the first petitioner must surrender before the investigating officer the learned Magistrate having jurisdiction and then seek regular bail.

6. In the result, this petition is allowed in part.

a) The petition in so far as it relates to the claim for anticipatory bail of the first petitioner/husband is dismissed with the observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, expeditiously.

b) This petition is allowed in so far as it relates to the claim of petitioners 2 and 3. Following directions are issued under Section 438 Cr.P.C in favour of petitioners 2 and 3.

i) Petitioners shall surrender before the learned Magistrate having jurisdiction at 11 a.m on 30/08/2007.

ii) They shall be released on regular bail on condition that they execute bonds for Rs.25,000/-(Rupees twenty five thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

iii) The petitioners shall make themselves available for interrogation before the investigating officer between 10 a.m and 1 p.m on 31/08/2007 and 01/09/2007 and thereafter on all Mondays and Fridays between 10 a.m and 12 noon for a period of one month. Subsequently the petitioners shall so appear as and when directed by the investigating officer in writing to do so.

(iv) If the petitioners do not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioners and deal with them in accordance with law, as if these directions were not issued at all.

(v) If they were arrested prior to 30/08/2007, they shall be released from custody on their executing a bond for Rs.25,000/- (Rupees twenty five thousand only) without any sureties, undertaking to appear before the learned Magistrate on 30/08/2007.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007